IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 05.04.2007

Coram

The Honourable Mr. Justice P. JYOTHIMANI

W.P. Nos.28714, 28401, 46398 and 28359 of 2006
and 681 to 687 and 1851 of 2007

Tamilnadu Village Administrative
Officers Munnetra Sangam,
rep. by its Deputy Secretary
R. Lakshmipathy ... Petitioner in WP.28714/06

N.Raman ..Petitioner in WP.28401/06.

K.Paneerselvam ..Petitioner in WP.46398/06

T.Paneerselvam ..Petitioner in WP.28359/06

M. Ganesan ..Petitioner in WP.681/07

V.Ravichandran ..Petitioner in WP.682/07

K.Selvaraj ..Petitioner in WP.683/07

N. Balasundaram ..Petitioner in WP.684/07

K.Palaniswamy ..Petitioner in WP.685/07

M. Bannari ..Petitioner in WP.686/07

H. Bojan ..Petitioner in WP.687/07

M.Ramamoorthy
R.G.Balasubramanian
S. Ganesan
N.Mani
S.Jagathguru ..Petitioners in WP.1851/07.

..Vs..

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1. The State of Tamilnadu,
rep. by the Secretary to
Government,
Revenue (Service-7) Department,
Fort St. George,
Chennai - 600 009.

2. The Chief Commissioner and
Commissioner for Revenue
Administration,
Ezhilagam, Chennai - 600 005. ..Respondents 1 and 2 in all Wps.Except WP.28359/06.

The Special Commissioner and
Commissioner for Revenue Administration,
Eziligam, Chennai 5. ..2nd Respondent in WP.28359/06.

3. The District Collector,
Tiruvallure District
at Tiruvallure. ..3rd Respondent in WP.28714, 28401, 46398/06, 681 to 687/2007.

4. The District Collector,
Kancheepuram District
at Kancheepuram. ..4th Respondent in WP.28714, 28401, 46398/06, 681 to 687/2007.

5. The District Collector,
Coimbatore District
at Coimbatore. ..5th Respondent in WP.28714, 28401/06, 681 to 687/2007.

6. Tamilnadu Village Administrative
Officers Association,
rep. by its General Secretary,
R. Bose S/o Ramasamy,
No.26, Venkatachala Naicker Street,
Triplicane, Chennai - 600 005. ...6th Respondent in WP.28714/06.

(R6 impleaded as per the order
dtd.14.9.2006 in M.P. No.4/06
in W.P. No.28714 of 2006)

The District Collector,
Nagapattinam District,
Nagapattinam. ..3rd Respondent in WP.1851/2007

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The Revenue Divisional Officer,
Mayiladuthurai Taluk,
Nagapattinam District. ..4th Respondent in WP.1851/07.

WP NO. 28714/06 and 28401/06

The Writ Petitions filed under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of certiorarified Mandamus Calling for the records relevant to the order in G.O. 534, dated 14-08-2006 passed by the first respondent and the consequential order in letter No. Service 5(1)/42964/2006 dated 17-08-2006 passed by the 2nd respondent is illegal and the G.O.Ms.No. 864, Revenue Dept. dated 10-08-1992 and thereby direct the respondent to follow the G.O.Ms.No. 864 Revenue Dept. dated 10-08-1992 in respect of the Transfer of Village Administrative officers and not to transfer the petitioner Sangam members and Petitioners to any other Division respectively

WP NO. 681 TO 687 OF 2007

The Writ Petitions filed under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of certiorarified Mandamus to call for the records relevant to the order in G.O.534, dated 14.08.2006 passed by the Ist respondent and the consequential order in letter No.Service 5(1)/42964/2006 dt.17.08.2006 passed by the 2nd respondent, and quash the same and thereby direct the respondents to follow the G.O.Ms.No.864 Revenue Dept., dt.10.08.1992 in respect of the Transfer of Village Administrative Officers and not to transfer the petitioner to any other Division

WP NO. 46398 of 2006

The Writ Petitions filed under Article 226 of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of certiorarified Mandamus calling for the records relevant to the order in G.O 534 dated 14.08.2006 passed by the first respondent and the consequential order in letter No. Service 5(1) /42964/2006 dated 17.8.2005 and further letter dated 17.11.2006 passed by the 2nd respondent and quash he same as illegal, and against the G,O.Ms.No. 864 Revenue department dt. 10.08.92 and thereby direct the respondent is follow the G.O. Ms. NO. 864 Revenue Department dated 10.08.1992 in respect of transfer and village Administrative Officers and to transfer the petitioner to any other Division.

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W.P.No.28359 of 2006

The Writ Petition filed under Article 226 of the Constitution of India prayed that this Honourable Court may be pleased to issue a writ of Certiorarified Mandamus calling for the records in connection with the proceedings issued in letter No. Pani 5(1)/42964/2006 dated 17.8.2006 passed by the 2nd respondent and quash the same.

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W.P.No.1851 of 2007:- The Writ Petition filed under Article 226 of the Constitution of India prayed that this Honourable Court may be pleased to issue a writ of Certiorarified Mandamus calling for the records relevant to the order in G.O.534 dated 14.8.2006 passed by the Ist respondent and consequential order in letter No. service 5 (1)/42964/2006 dated 17.8.2006 and further letter dated 17.11.2006 passed by the 2nd respondent and order passed by the 4th respondent in Na.Ka.No.5859/2006/A3 dated 28.11.2006 and quash the same as illegal and against the G.O.Ms.No.864 Revenue Department dated 10.8.1992 and thereby direct the respondents to follow the G.O.Ms.No.864 Revenue Department dated 10.8.1992 in respect of the transfer of Village Administrative Officer and revert back the petitioners to their original places.

For Petitioners : Mr. S. Ilamvaludhi for
M/s M.V. Muralidharan and B. Gandhi
(W.P. No.28714 and 28401 of 2006
and 1851 of 2007)

Mr. K. Mohanamurali
(W.P. No.46398 of 2006)

Mr. S. Ilamvaludhi
(W.P. No.28359 of 2006)

M/s Joseph George Mayiladumpara
(W.P. Nos.681 to 687 of 2007)

For Respondents : Mr. G. Sankaran,
Addl. Govt. Pleader (all W.Ps.)

Mr. L. Chandrakumar for R6
(W.P. No.28714 of 2006)

O R D E R

In all these writ petitions, the validity of G.O.534 dated 14.8.2006 passed by the Government and consequential order dated 17.8.2006 passed by the Chief Commissioner and Commissioner for Revenue Administration are assailed on the basis that it is not only against the principles of natural justice but also against G.O.Ms.No.864 Revenue Department dated 10.8.1992 and also sought direction against the respondents to follow G.O.Ms.No.864.

2. The writ petitioners, who are either Village Administrative Officers or the Association of the Village Administrative Officers, have filed the above writ petitions.

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3. It is an admitted case that the post of Village Administrative Officer was brought within the purview of the Tamil Nadu Public Service Commission by G.O. Ms.No.2747 Revenue Department dated 12.12.1980. By subsequent G.O.Ms.No.362 Personnel and Administrative Reforms (Personnel-B) Department dated 21.6.1988, the said post was included in the Ministerial service by way of amendment issued to the Special Rules for the Tamil Nadu Ministerial Service. As per the said Government Order, the person appointed under the Ministerial Service, with which the post of Village Administrative Officer was included, shall be liable to be transferred within the division by the Revenue Divisional Officer; within the District by the District Collector and on administrative reasons, outside the district by the Commissioner of Revenue Administration. The amended Rule reads as follows:-

> " 9. Every person appointed to the post shall be liable to be transferred to any place, ----
>
> (i) within the division by the Revenue Divisional Officer;
>
> (ii) within the district by the District Collector and
>
> (iii) on administrative reasons, outside the district by the Commissioner of Revenue Administration."

This was also incorporated in the statutory Rules subsequently.

4. The Government has issued certain guidelines in respect of posting and transfer of Village Administrative Officers, stipulating certain conditions about their posting neither in their native Taluks nor in the Taluks, in which they had previously worked as Village Administrative Officers. Subsequently, by G.O. Ms.No.864 Revenue dated 10.8.1992, further guidelines were issued in respect of transfer of Village Administrative Officers. Some of the Clauses in the said G.O. read as follows:-

> " (i) The Village Administrative Officers shall be permitted to work in their own taluk;
>
> (ii) The transfer of the Village Administrative Officers shall be effected in the month of May every year by preparing the list of Village Administrative Officers, who have worked for three years on the first day of May and such transfers shall be completed by the end of May."

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5. Clause 7 of the aforesaid G.O. states that on Divisional basis, the villages shall be divided into 'A', 'B', 'C' and 'D' villages and while effecting transfer, the persons, who have completed three years in 'A' village shall be transferred to other villages. Likewise, in respect of persons, who have completed three years in 'B', 'C' and 'D' villages, shall not be permitted to work in the same villages thereafter. In effect, such transfer shall be effected within the Taluk. In extraordinary circumstances, when Taluk level transfer is not possible, the Division level transfer can also be effected. In addition to that, various other guidelines are given under G.O.Ms.No.864 dated 10.8.1992, which is sought to be implemented by the writ petitioners.

6. Subsequently, the Government has passed G.O.Ms.No.10 Personnel and Administrative Reforms (Personnels-S) Department dated 7.1.1994 in respect of the transfer of Government servants from one station/post to another and various guidelines were given, including that as a general policy, the transfer period is stated as 1st April to 30th June every year.

7. By subsequent G.O.Ms.No.1156 dated 8.12.1995, the Government, as a policy, clubbed 'A' and 'B' villages as 'A' village and 'C' and 'D' villages as 'B' village, with the result, 'A' village is spotted from the urban areas, while 'B' village is spotted from the rural areas. In the said Government Order, while effecting transfer, it was decided that the persons, who worked as Village Administrative Officers in 'A' village, shall not work for more than one year in the said village and the persons, who worked in 'B' village after a period of three years, have to be transferred. This change was effected by the Government by considering the complaints that same persons have been continuously working in 'A' village, with the result, the other persons, who worked in rural villages viz. 'B', 'C' and 'D' villages had no chance of coming to 'A' village at any point of time during their service period. To rectify the said anomaly, G.O.Ms.No.1156 dated 8.12.1995 was brought into existence.

8. Ultimately, the Government, in the impugned G.O.No.534 dated 14.8.2006, by referring to all the previous Government Orders and also the letter of the Special Commissioner and Commissioner of Revenue Administration dated 6.7.2006, insisted for effecting general transfer among the Village Administrative Officers and directed that the transfer among the Village Administrative Officers has to be effected, based on G.O.Ms.No.864 Revenue Department dated 10.8.1992, by lifting the ban on recruitment and also based on existing guidelines and also directed that such transfer has to be effected as a general transfer on or before 31.8.2006.

9. The grievance of the petitioners in the writ petitions is that as per G.O. Ms.No.864, the transfer should be effected within the Taluk is the normal practice and the transfer effected within division should be treated as exceptional circumstances. The contention raised by the learned counsel appearing for the writ petitioners is that the petitioners

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are not opposed to the transfer effected in accordance with the policy, but their grievance is that if the transfer is effected from 'A' village to 'B' village in Taluk level, there is a possibility for all the Village Administrative Officers to have equity in transfer, since everyone has opportunity to work in 'A' village also. On the other hand, if transfer is effected in Division level, i.e. a person working in one Taluk is taken to a division, he may not have an occasion to work in 'A' village at all during his service period. Therefore, according to the petitioners, if transfers are effected on division level, their rights will be affected.

10. Learned counsel appearing for the petitioners would submit that there is another problem in effecting transfer on division level, viz. seniority will be affected. Except in many Districts, in Thiruvallur District, because of bifurcation and creation of new District from Kancheepuram, when the Government has resorted to effect transfer by taking division as criteria, the problem arose. Therefore, according to the petitioners, when G.O.Ms.No.864 basically states that the transfer shall be effected in Taluk level, effecting transfer in Division level will be treated in exceptional cases, which cannot be resorted to in normal circumstances. In this view of the matter, even though it is made very clear that the petitioners are not against the policy decision of the Government in respect of the transfer at all, it is almost like a anomaly in one or two Districts alone and on that basis, the impugned G.O.No.534 dated 14.8.2006 is sought to be questioned.

11. On the other hand, it is the stand of the Government that insofar as seniority of the Village Administrative Officers is concerned, it is fixed on District level only. In respect of effecting transfer, in G.O.Ms.No.864, the Government made it clear that in normal circumstances, the transfer should be made in Taluk level. The Village Administrative Officer, who shall not be posted in his own village, has to be posted in the same Taluk for the reason that he knows the nature of the land and other important aspects, so as to enable him to function effectively. Further, even under the G.O.Ms.No.864, it was contemplated that in case of exigency, it was always open to the Government to effect transfer on Division level, but according to the respondents, even under G.O.Ms.No.864, which is sought to be implemented by the petitioners themselves, there is a provision for effecting transfer on Division level in case of exigency.

12. It is also the categoric case of the respondents that in fact the seniority of the Village Administrative Officers maintained always on District level has never been affected and also it is their case that almost all the Village Administrative Officers, who have been transferred, have joined in their respective places. In fact, the counter affidavit also states that there are cases where the Village Administrative Officers have worked in 'B' village for more than three years. Likewise, there are persons who have worked in 'A' village for more than one year. In such

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circumstances, the Government issued G.O.1156 Revenue Department dated 8.12.1995 that Village Administrative Officers working in 'A' village are to be transferred after completion of one year and likewise the Village Administrative Officers working in 'B' village are to be transferred after completion of three years. To effectively implement the same, the impugned Government Order has been passed and even in G.O.Ms.No.864 itself, the divisional seniority was prepared only for the purpose of transfer, while maintaining the service conditions and the seniority of the Village Administrative officers without affecting the seniority on District basis.

13. It is also the case of the respondents that the Village Administrative Officers are mostly transferred within the Taluk and in few cases, they are transferred within the revenue Division i.e. also within the radius of about 30 k.m. It is also the specific case of the respondents that based on G.O. No.534 dated 14.8.2006, the general transfers have been made and though general transfers were effected in 2001, 2002 and 2004, the writ petitioners have not chosen to challenge the said transfers. The writ petitioners have challenged the transfer only in 2006 for the first time before this Court. The respondents have also relied on the order passed by this Court on 9.10.2001 in W.P. No.18387 of 2001, stating that since the transfer is largely within the Taluk area, the studies of the children will not be affected. It is also the case of the respondents that G.O.Ms.No.10 Personnel and Administrative Reforms Department dated 7.1.1994, which stipulates that the Government servants are liable to be transferred after completion of three years in the same station/post, is not applicable to the Village Administrative Officers.

14. It is also the specific case of the respondents in the counter affidavit that out of 73 revenue Divisions in the entire State, only in four Divisions namely Chengleput, Ponneri, Tiruvallur and Coimbatore, the transfers will be effected on Division level. This is because there are less number of 'A' village and more number of 'B' village in these revenue Districts and the Village Administrative Officers, who completed one year in 'A' village, cannot be accommodated in 'B' village Taluk and therefore in a Taluk, where 'B' villages predominant, Village Administrative Officers have to wait for some time for their chance to come to 'A' village. According to the respondents, this is an equitable distribution and cannot be questioned by the petitioners at all.

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15. I heard the learned counsel appearing for the petitioners in all these writ petitions and the learned Additional Government Pleader appearing for the respondents.

16. In all these writ petitions, it is seen that not only G.O.No.534 dated 14.8.2006 is impugned, but also sought direction to follow G.O.Ms.No.864 dated 10.8.1992, apart from stating that transfer of Village Administrative Officers shall be in taluk level as a general rule

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except as specifically contemplated in Rule No.7 that in exigency circumstances, the Division level transfer is permissible. Therefore, even as per the prayer in the writ petitions, who prayed for implementation of G.O.Ms.No.864 dated 10.8.1992, which contemplates such transfers in Division level, the same cannot be questioned by them. In any event as correctly pointed out by the learned Additional Government Pleader, the transfers have been effected from 2001 onwards and some of the exigency circumstances have been followed on Divisional basis and none of these petitioners have chosen to question the same. It is only for the first time in 2006 the petitioners have chosen to question the same for the reason that the petitioners are unable to reach 'A' village.

17. It is not even the case of the petitioners in these writ petitions that while making transfer on Divisional basis, an arbitrary exercise has been done in those cases where a person, who is senior and working in 'B' village, has been arbitrarily retained in 'B' village, by denying his right to transfer to 'A' village on the basis of effecting transfer on Division basis. In the absence of any individual cases while effecting transfers, I do not think this Court can interfere especially when the prayer in the writ petitions is to implement G.O.Ms.No.864, which contemplates that the transfers will be not only on Taluk level but also on Divisional level in exigent circumstances. This also fortifies another fact that admittedly as stated in the counter affidavit of the respondents, out of 73 revenue Divisions in the whole of State, it is only in four revenue Divisions viz. Chengleput, Coimbatore, Ponneri and Thiruvallur, the transfers are effected on Divisional basis. This very fact shows that contingencies are in existence in the said Divisions which warranted the Government to pass orders on Divisional basis to which the Government is empowered under G.O.Ms. No.864 itself.

18. In view of the aforesaid facts, it is relevant to refer to some of the judgments relating to transfer, as submitted by the learned Additional Government Pleader. In a decision reported in the case of N.K. SINGH v. UNION OF INDIA AND OTHERS ((1994) 6 SCC 98), the Supreme Court has held that any transfer effected in public interest can be challenged on the ground that it is prejudicial to the public interest. The person, who claims that such transfer was avoidable one or the successor was not suitable, must prove the same. The suitability is the matter of objective assessment by the hierarchical superiors in administration and in the absence of materials, there can be no further enquiry in this regard. The relevant passage of the Supreme Court reads as follows:-

> " 9. Transfer of a public servant from a significant post can be prejudicial to public interest only if the transfer was avoidable and the successor is not suitable for the post. Suitability is a matter for objective assessment by the hierarchical superiors in administration. To introduce and rely on the element of prejudice to public interest as a vitiating factor

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> of the transfer of a public servant, it must be first pleaded and proved that the replacement was by a person not suitable for the important post and the transfer was avoidable. Unless this is pleaded and proved at the threshold, no further inquiry into this aspect is necessary and its absence is sufficient to exclude this factor from consideration as a vitiating element in the impugned transfer. Accordingly, this aspect requires consideration at the outset."

19. As submitted by the learned Additional Government Pleader, as long as the transfer is not effected in the form of punitive in nature, such transfer cannot be assailed. Admittedly, the transfer of Village Administrative Officer on Division level is not questioned on individual basis and only in rare cases the Division transfer is effected, that too as stated earlier, no individual case is projected before this Court to show that such transfer effected is against the public interest or made in arbitrary manner.

20. In a decision reported in the case of STATE OF U.P. v. SIYA RAM ((2004) 7 S.C.C. 405), the Supreme Court has held as follows:-

> " 5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to other is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or stated to be in violation fo statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative exigencies of the service concerned. This position was highlighted by this Court in National Hydeoelectric Power Corpn. Ltd. v. shri Bhagwan."

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21. In any event, as submitted by the learned Additional Government Pleader, any transfer cannot be decided by the Court exercising jurisdiction under Article 226 of the Constitution of India as an Appellate Authority to decide the same on merits, apart from the fact that no material is placed before this Court to show that any transfer has been effected vindictively. This was dealt in a decision reported in the case of STATE OF U.P. v. GOBARDHAN LAL ((2004) 11 S.C.C. 402), wherein the Supreme Court held has follows:-

> " 8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence on the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures surmises and except for strong and convincing reasons, no interference can ordinarily be made with an order of transfer."

22. Therefore, the scope of judicial review in respect of transfer is limited and unless the transfer is shown to be mala fide exercise of power or in violation of statutory provisions which prohibits the transfer, the Court's power to interfere is very limited as it was held by the Supreme Court again in a decision reported in the case of NATIONAL HYDROELECTRIC POWER CORPN. LTD. v. SHRI BHAGWAN ((2001) 8 S.C.C. 574).

23. In a similar circumstance, in respect of Tambaram Taluk, when the matter was agitated regarding Village Administrative Officers, this Court, by an order dated 14.9.2004 passed in W.P. Nos.25513 to 25519 of 2004, held that if any transfer from 'A' village to 'B' village is effected in an arbitrary manner, the individual transfer can be questioned, but, as a policy, the same cannot be challenged by referring to G.O.Ms.No.864 dated 10.8.1992 in the following terms:-

> " 4. The third contention raised by the learned counsel for the petitioners is with regard to the transfer of the Village Administrative Officers as the villages have been reclassified into two categories namely, A and B even within Tambaram Taluk. It is

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submitted by the learned counsel that as the transfers are based on the said classification of villages, it will affect the petitioners. The argument advanced by the learned counsel cannot be accepted. If any person already serving in class A village is transferred to class B village, it is always permissible for him to challenge such order of transfer."

24. A reference to the list of Village Administrative Officers in B village and A village in taluk level and Divisional level produced by the learned Additional Government Pleader shows that it is only in the district of Thiruvallur, where exigency arises and therefore to meet the situation, when 'B' village is stated to be more than 'A' village, the respondents had to resort to Divisional level for the purpose of effecting transfer. As it is reiterated by the respondents in the counter affidavit, this sort of Division level transfer will not affect the seniority of Village Administrative Officers, making it clear that if the persons in 'A' village are transferred against the principles of law and also against the statutory Rules, it is always open to such individuals to approach the Court for redressal, I am of the considered view that the impugned G.O. cannot be assailed by the petitioners at all for the reason that the impugned G.O. is not unreasonable.

25. In view of the above, leaving it open to the individual petitioners to challenge the order of transfer, if it affects principles of law or statutory provisions, all the writ petitions are dismissed. Consequently, the connected M.Ps. are also dismissed. No costs.

After pronouncing the order in the batch of the above writ petitions, Mr.Ilamvazdhi, learned counsel appearing for some of the petitioners in the above writ petitions would submit that the petitioners are prepared to join in the place to which they were transferred. According to him, if some other persons are appointed their appointment may be obstructed to which submission, Mr.G.Sankaran learned Additional Government Pleader would reply that the petitioners who are willing to join in the transferred place will be permitted to do so.

The said factum is recorded.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

ssa.

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To
1. The Secretary to Government
Revenue Department,
Fort St. George,
Chennai.

2. The Chief Commissioner and
Commissioner of Revenue Administration,
Ezhilagam, Chennai-5.

3. The Special Commissioner and Commissioner
Revenue Administration,
Ezhilagam, Chennai-5.

4. The District Collector,
Thiruvallur District.
Thiruvallur.

5. The District Collector,
Kancheepuram District
Kancheepuram.

6. The District Collector,
Coimbatore District,
Coimbatore.

7. The District Collector
Nagapattinam District,
Nagapattinam

8. The Revenue Divisional Officer,
Mayiladuthurai Taluk,
Nagapattinam District.

+ 5 CCs to Mr. M.V. Muralidaran, Advocate SR 21919 to 21932
and SR.No. 22290.
+ 3 CCS to Mr. Joseph George Mayiladumpara, Advocate SR 21951
+ One cc to Mr. L. Chandrakumar Advocate SR 22067
+ One cc to Govt Pleader SR 22429,22431,22432,
22434 to 22438,22440 to 22443.

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W.P. Nos.28714, 28401,
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